

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

LEONARD CHESTER	:	CIVIL ACTION
	:	
v.	:	
	:	
THE MAY DEPARTMENT STORE CO.	:	
t/a STRAWBRIDGE'S	:	NO. 98-5824

MEMORANDUM ORDER

Presently before the court is plaintiff's Motion for Sanctions filed on August 19, 1999. Plaintiff seeks an order precluding defendant from offering any evidence on the issue of liability at the arbitration of this case scheduled for August 25, 1999. This, of course, would be tantamount to directing a verdict on liability in plaintiff's favor.

Plaintiff contends that such an extreme sanction is warranted because defendant did not designate proper corporate representatives for depositions noticed by plaintiff pursuant to Fed. R. Civ. P. 30(b)(6) on the subjects of "the claims made by the plaintiff," "the management of the Polo Shop in the store where plaintiff's fall occurred" and "the maintenance of the area where plaintiff's fall occurred." Plaintiff, in fact, deposed three witnesses on March 16, 1999. It is impossible, however, to discern from plaintiff's submissions whether these were the witnesses designated by defendant in response to the Rule 30(b)(6) notices.

Plaintiff complains that none of the deponents could "testify fairly and accurately about corporate policies of the defendant" as the "deponents were not managers or supervisors."

A party is not required to designate a manager or supervisor or even a current employee. See Fed. R. Civ. P. 30(b)(6) ("the organization named shall designate one or more officers, directors, or managing agents, or other persons who consent to testify on its behalf") (emphasis added). It is not at all apparent that a non-supervisory employee, acting as a 30(b)(6) designee or otherwise, would not be competent to testify regarding corporate policies. Plaintiff does not provide a transcript from any of the depositions or otherwise demonstrate specific deficiencies in any deponent's testimony.

The case was originally scheduled for arbitration on May 21, 1999. At plaintiff's request, the arbitration date was continued to June 25, 1999. At the June 25, 1999 arbitration, an award was entered in favor of defendant due to the failure of plaintiff and his counsel to appear. The court accepted plaintiff's counsel's excuse for not appearing and granted plaintiff's motion to vacate the default arbitration award. Another arbitration was then scheduled for August 25, 1999.

The purported deficiencies in the testimony of the deponents in question would have been apparent on March 16, 1999. Yet, plaintiff did not then file a motion to compel defendant to provide another designee or otherwise objecting to the responses provided by the three deponents. He did not do so when moving to continue the arbitration scheduled for May 21, 1999. He did not do so when moving to vacate the arbitration award entered against him on June 25, 1999. Rather, he has waited until just before

the second arbitration to seek to prevent defendant from presenting any evidence because of an alleged deficiency which even if true could have easily been rectified by the court upon a timely motion by plaintiff. Plaintiff provides no explanation for such extraordinary delay.

Plaintiff contends that such a sanction is also warranted because defendant has not agreed to produce its employee, Mary Coscado, to testify at the arbitration. Plaintiff does not, however, suggest that he has ever attempted to subpoena her.

Plaintiff has clearly failed to demonstrate that the extreme sanction he seeks is warranted. In the interest of fairly, efficiently and finally resolving this matter, however, the court will require defendant to make Mr. Coscado available to testify at the arbitration.

ACCORDINGLY, this day of August, 1999, upon consideration of plaintiff's Motion for Sanctions, **IT IS HEREBY ORDERED** that said Motion is **DENIED**, however, defendant shall produce its employee, Mary Coscado, to testify at the arbitration on August 25, 1999.

BY THE COURT:

JAY C. WALDMAN, J.